

## Message Text

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ACTION ARA-10

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FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 2850

INFO AMCONSUL CALI

AMCONSUL MEDELLIN

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EO 11652: NA

TAGS: EFIN, CO

SUBJ: COLOMBIANIZATION OF BANKS

REF: 75 STATE 302576, BOGOTA 0227

1. ACTING SUPERINTENDENT OF BANKS (MANRIQUE) INFORMED  
EMBASSY THAT REGULATIONS IMPLEMENTING BANK COLOMBIANIZATION  
LAW WOULD NOT BE DEVELOPED AND ISSUED FOR ANOTHER THREE TO

FOUR MONTHS. HOWEVER, IN THE OPINION OF MANRIQUE  
AND OTHER SOURCES, KEY ELEMENTS OF IMPLEMENTING  
REGULATIONS WILL BE AS FOLLOWS:

A. NEW FOREIGN INVESTMENT (ARTICLE ONE). GOC IS LIKELY  
TO FOLLOW A STRICT INTERPRETATION OF THIS ARTICLE TO THE  
EXTEND OF PROHIBITING THE FOREIGN BANKS, WHICH WILL BE  
MINORITY PARTNERS IN THE NEW BANK TO BE ESTABLISHED, FROM  
PARTICIPATING IN FUTURE CAPITAL INCREASES OR IN  
REINVESTMENT OF PROFITS . THE RESULT WILL BE A GRADUAL  
DECREASE IN THE FOREIGN PARTNER'S SHARE OF THE TOTAL EQUITY  
INVESTMENT.

B. ESCROW ARRANGEMENTS (ARTICLE THREE). MANRIQUE  
STATED THAT THE PROVISION WHEREBY BANKS WHICH DECIDE TO  
COLOMBIANIZE TURN OVER THEIR SHARES TO THE BANK OF THE  
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REPUBLIC PENDING SALE IS DESIGNED TO PREVENT THE

SALE OF STOCK TO NONELIGIBLE GROUPS OR PERSONS. OTHERWISE THE PRICE AND TIMING OF THE SALE ARE TO BE WORKED OUT BETWEEN BUYER AND SELLER. THE ONLY OTHER RESTRICTION IS THAT STOCK CANNNOT BE SOLD FOR LESS THAN ITS PAR VALUE.

C. PHASE OUT (ARTICLE FOUR). COMMERCIAL BANKS THAT DO NOT AGREE TO CONVERT TO MIXED ENTITIES ARE TO CEASE BANKING OPERATIONS BY THE END OF THIS YEAR. THE LAW DOES NOT SPECIFY THE PERIOD THAT WILL BE GRANTED THESE BANKS TO DISPOSE OF THEIR PROTFOlio AND PHYSICAL ASSETS, BUT THE IMPLEMENTING REGULATIONS WILL PRBALLY DETAIL TARGETS THAT MUST BE MET.

D. REPRESENTATIVE OFFICES (ARTICLE FIVE). THE MONETARY BOARD IS LIKELY TO ISSUE RATHER RESTRICTIVE RULES REGULATING THE ACTIVITIES OF REPRESENTATIVE OFFICES. ONE LIKELY RESTRICTION IS THAT ANY LOANS ARRANGED BY THESE OFFICES WILL HAVE TO BE COURSED THROUGH LOCAL COMMERCIAL BANKS (INCLUDING THOSE WITH FOREIGN CAPITAL).

2. WHILE MOST SOURCES CONTRACTED BY TH EMBASSY BELIEVE THAT THE LAW IS CONSTITUTIONAL, SEVERAL STATES THAT IT NEVERTHELESS WOULD BE CHALLNGED IN THE COURTS, ALTHOUGH NOT NECESSARILY BY THE BANKS THEMSELVES. THE BASIS FOR SUCH A CHALLENGE COULD BE A) UNILATERAL ABROGATION BY THE GOVERNMENT OF CONSESSIONS, USUALLY VALID FOR A PERIOD OF 20 YEARS, GRANTED TO THE BANKS SEVERAL YEARS AGO; B) TITLE SIX, CHAPTER TWO OF THE COMMERCIAL CODE WHICH, AMONG OTHER THINGS, GRANTS EXISTING SHAREHOLDERS THE RIGHT TO PARTICIPATE IN ANY NEW ISSUE FO SHARES; OR C) THE U.S. GOC TREATY OF PEACE, AMITY, NAVIGATION AND COMMERCE.

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